



**A Publication of the
FUNERAL DIRECTORS EXAMINING BOARD**

Volume 10, No. 1

May, 2000

Final Chapter of Court of Appeals Case

The Department of Regulation and Licensing approved the sale by Service Corporation International (SCI) of its interest in 4 Wisconsin cemeteries to Stewart Enterprises on December 28, 1999. SCI owned two cemeteries, West Lawn Memorial Park in Racine and Nicolet Memorial Gardens Association in Green Bay, and it had management rights for two other cemeteries, Lake View Memorial Park in Oshkosh and Appleton Highland Memorial Park, Inc., in Appleton.

The sale of the interests of these cemeteries brought SCI into conformity with the Wisconsin Statutes that prohibit joint ownership of cemeteries and funeral establishments in Wisconsin.

**THE WISCONSIN FUNERAL DIRECTORS
EXAMINING BOARD**

Members of the Board:

Roy T. Pfeffer, Chair (Manitowoc)
Daniel P. Densow, Vice Chair (Appleton)
W. Robert Cress (Madison)
Bonnie Gift (Fennimore)
Peter J. Schils (Sheboygan)
Rick D. Unbehaun, Secretary (Richland Center)

Administrative Staff:

Cletus J. Hansen, Division Administrator

Executive Staff:

Marlene A. Cummings, Secretary
William Conway, Deputy Secretary
Myra Shelton, Executive Assistant

Subsequent to the sale of the cemeteries by SCI, the Funeral Directors Examining Board rescinded its denial of the original licensure or license renewal of 15 SCI-owned funeral establishments located in Wisconsin (SCI owns 4 additional funeral establishments in Wisconsin; their licenses had already been renewed).

The terms of the sale of the cemeteries to Stewart Enterprises was carefully scrutinized by the Board and the attorneys who provided services to the Board. Assistant Attorney General, Bruce Olson, gave the following assurances to the Board before the Board rescinded its denials of the funeral establishment license applications: "During the term of the sales contract, it is true that FSI [Funeral Service, Inc.] will have a financial relationship with a cemetery authority. However, that relationship, in my opinion, is not contrary to the public policies that underlie Wisconsin's anti-combination laws. FSI's primary interest will be in the unpaid balance of the promissory

Contents

Final Chapter of Court of Appeals Case...	1
Certificates in Good Standing	2
Legislative Update.....	2
Funeral Directors Apprentice Advisory Committee.....	2
Regulation of Crematories	3
New Disclosure Requirements For Persons Who Sell Cemetery Merchandise.....	3
Disciplinary Actions.....	3
Telephone Directory and Miscellaneous.....	4

note signed by SESCO. During the term of the agreement, FSI has no opportunity to exert monopoly power over the provision of death services in a local market.

FSI will not be able to control the business decisions made by SESCO. FSI will not be able to share any profits earned by SESCO. Even in the event of a default by the buyer, it is my opinion that currently-existing state law will limit FSI's ability to exercise proxy control over the stock shares that serve as collateral to secure the note."

Certificates in Good Standing

There has been considerable discussion about proposed revisions to the statutes that provide for certificates in good standing. The Board has recently modified the requirements whereby a person holding a certificate in good standing may again be licensed. The current requirements are: applicants for a regular license who held a certificate in good standing for over 5 years must obtain 30 continuing education hours, with a minimum of 6 hours from Section FD 4.04(1)(a)(2), Wis. Admin. Code, relating to professional conduct, business ethics and legal aspects of the practice of funeral directing, and a minimum of 10 hours from Section FD 4.04(1)(a)(4), Wis. Admin. Code, relating to the technical or practical aspect of practice, take and successfully pass the state law exam and perform 10 embalmings within 12 months, under the direct supervision of a licensed embalmer.

AB 869 was introduced by Representative Suzanne Jeskewitz at the request of Secretary Marlene Cummings. One public hearing was held. AB 869 simply requires persons who held a certificate in good standing for more than 5 years to pass the state law exam without charge and to pay the regular license renewal fee. The Board opposed this part of the bill, but supported the proposed elimination of certificates in good standing and the elimination of the requirement that a licensed funeral director may not renew his or her license if he or she is not working at a funeral establishment.

As of March 21, 2000, there were 51 people holding a current certificate in good standing.

Of the 51 persons, 44 have not held a funeral directors license within the past 5 years. Seven have held a certificate in good standing less than 5 years. AB 869 did not pass in this legislative session.

Legislative Update

AB 538/SB 257. This legislation relates to minimum standards for life insurance policies. These bills would eliminate the authority of the Commissioner of Insurance to promulgate rules establishing minimum standards for benefits and compensation arrangements for burial agreements funded by a life insurance policy. These bills respond to the concerns of some funeral directors and insurance agents who feel that the following rule of the Commissioner of Insurance poses an undue problem for insurance-funded burial agreements: "An insurer may issue a funeral policy only if the policy's death benefit will equal or exceed the cumulative premiums which may be required to be paid for the policy plus interest at the rate of three percent per annum compounded annual to the tenth anniversary of the effective date of coverage." AB 538, as amended, passed the Legislature and is waiting to be signed by Governor Tommy Thompson.

SB 69. This bill would require cemetery authorities to provide for burials during each season. SB 69 did not pass in this legislative session.

SB 307. This bill would increase the amount of irrevocable burial trusts to \$3,500 immediately upon passage of the bill. SB 307 did not pass in this legislative session.

SB 483. This bill would create a distinction between Class A and Class B funeral establishment licenses. Class A establishments would be able to operate Class B establishments without having a full-time licensed funeral director at the Class B establishment. SB 483 did not pass in this legislative session.

Funeral Directors Apprentice Advisory Committee

The advisory committee has made its final recommendations to the Funeral Directors

Examining Board. The Board discussed the recommendations at several meetings and will continue to discuss them at its meeting on May 23, 2000. Ultimately, the Board is expected to approve a new booklet that contains all of the forms and documents needed by an apprentice. Some of the so-called "busy work," consisting of essays and book reports will be eliminated. The booklet will contain a complete list of tasks to be performed by the apprentice. The level of supervision by a licensed funeral director will be designated for each task. It is possible that the Board will also recommend a few statutory and rule changes, relating to apprentices and apprenticeships.

Regulation of Crematories

Board member, Dan Densow, has given the Board a proposal for the regulation of crematories. The Board will continue to discuss the draft for a few months and then request a bill draft for the 2001 Legislature. Secretary Marlene Cummings has also reviewed the proposal and discussed it with the Board. She cautioned the Board about the possibility of this proposal interfering with the Department's comprehensive cemetery regulation proposal which will probably be introduced in the next Legislature.

New Disclosure Requirements For Persons That Sell Cemetery Merchandise

The Biennial Budget Bill – 1999 Wisconsin Act 9 was effective on October 29, 1999. It contained several provisions that pertain to persons (other than funeral directors) who sell or offer for sale a casket, outer burial container or cemetery merchandise. The new statutes refer to two important definitions:

"Outer burial container" means any container that is placed or intended to be placed into the burial excavation of a grave and into which a casket is placed or intended to be placed at the time of burial.

"Operator of funeral establishment" means any person who conducts, maintains, manages or operates a funeral establishment.

"Cemetery merchandise" means goods associated with the burial of human remains, including monuments, markers, nameplates, vases and urns, and any services that are associated with supplying or delivering those goods or with the burial of human remains and that may be lawfully provided by a cemetery authority. The term does not include caskets or outer burial containers.

The new statutes also define the following terms:

"Cash advance item" means personal property or a service that is obtained by a person from a 3rd party and that is paid for by the person on behalf of, and subject to reimbursement from, a buyer of a casket, outer burial container or cemetery merchandise from the person. "Cash advance item" includes cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or vocalists, nurses, obituary notices, gratuities and death certificates.

"Direct cremation service" means the disposition of human remains by cremation without any formal viewing, visitation or ceremony in which the body of the deceased is present.

"Outer burial container" has the meaning given in s. 157.061 (11g).

"Person" does not include a person issued a funeral director's license under ch. 445 or an operator of a funeral establishment, as defined in s. 445.01 (7).

The statutes essentially require persons who sell cemetery merchandise to provide disclosures and price lists to consumers very much like the disclosures and lists that funeral directors must provide. The statutes also prohibit various kinds of misrepresentation, similar to the prohibitions in the FTC Funeral Rule.

Disciplinary Actions

DOUGLAS D BRUCH

KENOSHA WI

SURRENDER

Charged with two counts of recklessly endangering safety with a dangerous weapon while masked. Effective 12/1/99. Secs. 941.30(1), 939.63(1)(a),(3), 939.641(2), Stats. Case #LS9912011FDR

Department of Regulation and Licensing
Funeral Directors Examining Board
P.O. Box 8935
Madison, WI 53708-8935

RETURN SERVICE REQUESTED

REGULATORY DIGEST

Bulk Rate
U.S. Postage
Paid
Madison, WI
Permit No. 1369

Telephone Directory

The Division of Business Licensure & Regulation has a menu telephone system which is designed to more efficiently direct the caller to the appropriate section. The telephone number for staff is:

(608) 266-5511

After dialing this number you are asked to press various extensions. For the following requests, please press numbers as noted:

Application Forms	Press 11
Complaints Against Licensees	Press 12
Whether A Person Is Licensed	Press 442
Application Processing and Requirements	Press 42

Visit the Department's Web Site

<http://badger.state.wi.us/agencies/drl/>
Send comments to dorl@drl.state.wi.us

Copies of Regulatory Digest on the Web

See the Web site listed above.

Wisconsin Statutes and Code

Copies of the Wisconsin Statutes and Administrative Code Relating to Funeral Directors Regulation can be ordered from the Department. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated November 1997.

Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes is not automatically provided.

WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.

Subscription Service

Bi-annual digest subscriptions are published for all Boards housed within the Department at a cost of \$2.11 each per year. CREDENTIAL HOLDERS RECEIVE THEIR REGULATORY DIGEST FREE OF CHARGE. Others may send the fee and this form to the address listed above.

Subscription Service Order Form

Name

Company/Organization

Street Address/P.O. Box

City/State/Zip + 4

County

Digest(s) desired:

G:newsletters/FD/500 digest.doc